

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Cunningham Communications, Inc.)	File No. EB-02-TS-067
)	
Operator of Cable Systems in:)	
)	
Washington, Kansas)	
Hebron, Nebraska)	
)	
Request for Waiver of Section 11.11(a) of the)	
Commission's Rules)	

ORDER

Adopted: May 29, 2002**Released: May 31, 2002**

By the Chief, Technical and Public Safety Division, Enforcement Bureau:

1. In this *Order*, we grant Cunningham Communications, Inc. ("Cunningham") temporary waivers of Section 11.11(a) of the Commission's Rules ("Rules") for the two above-captioned cable television systems. Specifically, we grant a temporary, 12-month waiver of Section 11.11(a) for the Washington, Kansas system and a temporary, 24-month waiver of Section 11.11(a) for the Hebron, Nebraska system. Section 11.11(a) requires cable systems serving fewer than 5,000 subscribers from a headend to either provide national level Emergency Alert System ("EAS") messages on all programmed channels or install EAS equipment and provide a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel by October 1, 2002.¹

2. The Cable Act of 1992 added new Section 624(g) to the Communications Act of 1934 ("Act"), which requires that cable systems be capable of providing EAS alerts to their subscribers.² In 1994, the Commission adopted rules requiring cable systems to participate in EAS.³ In 1997, the Commission amended the EAS rules to provide financial relief for small cable systems.⁴ The

¹ 47 C.F.R. § 11.11(a).

² Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 16(b), 106 Stat. 1460, 1490 (1992). Section 624(g) provides that "each cable operator shall comply with such standards as the Commission shall prescribe to ensure that viewers of video programming on cable systems are afforded the same emergency information as is afforded by the emergency broadcasting system pursuant to Commission regulations" 47 U.S.C. § 544(g).

³ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Report and Order and Further Notice of Proposed Rule Making*, FO Docket Nos. 91-171/91-301, 10 FCC Rcd 1786 (1994) ("First Report and Order"), reconsideration granted in part, denied in part, 10 FCC Rcd 11494 (1995).

⁴ *Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Broadcast System, Second Report and Order*, FO Docket Nos. 91-171/91-301, 12 FCC Rcd 15503 (1997) ("Second Report and

Commission declined to exempt small cable systems from the EAS requirements, concluding that such an exemption would be inconsistent with the statutory mandate of Section 624(g).⁵ However, the Commission extended the deadline for cable systems serving fewer than 10,000 subscribers to begin complying with the EAS rules to October 1, 2002, and provided cable systems serving fewer than 5,000 subscribers the option of either providing national level EAS messages on all programmed channels or installing EAS equipment and providing a video interrupt and audio alert on all programmed channels and EAS audio and video messages on at least one programmed channel.⁶ In addition, the Commission stated that it would grant waivers of the EAS rules to small cable systems on a case-by-case basis upon a showing of financial hardship.⁷ The Commission indicated that waiver requests must contain at least the following information: (1) justification for the waiver, with reference to the particular rule sections for which a waiver is sought; (2) information about the financial status of the requesting entity, such as a balance sheet and income statement for the two previous years (audited, if possible); (3) the number of other entities that serve the requesting entity's coverage area and that have or are expected to install EAS equipment; and (4) the likelihood (such as proximity or frequency) of hazardous risks to the requesting entity's audience.⁸

3. Cunningham filed a request for temporary waiver of Section 11.11(a) for the two captioned cable systems on February 12, 2002. Cunningham seeks a 12-month waiver for the Washington, Kansas system and a 24-month waiver for the Hebron, Nebraska system. In support of its waiver request, Cunningham states that these are small cable systems, with the Washington system serving 475 subscribers and the Hebron system serving 591 subscribers. Based on price quotes provided by EAS equipment manufacturers, Cunningham estimates that it would cost approximately \$9,500 to install EAS equipment at each of these systems for a total cost of \$19,000. Cunningham states that it plans to complete fiber optic interconnections of the Washington and Hebron systems with its Glen Elder, Kansas system by October 2003 and October 2004, respectively. Cunningham further states that when these interconnects are completed, the Washington and Hebron headends will be eliminated and its Washington and Hebron subscribers will receive national EAS messages from the Glen Elder system, which will have EAS equipment installed by the October 1, 2002 deadline. Cunningham asserts that the cost of installing EAS equipment at the two systems that are slated for elimination will impose a substantial financial hardship on it and provides a financial statement for 2001 in support of this assertion. In addition, Cunningham submits that its subscribers will continue to have ready access to national EAS information from other sources, including its cable systems. In this regard, Cunningham notes that its subscribers currently have access to national EAS messages on at least one third of all programmed channels. Cunningham also asserts that its subscribers will have access to EAS information through over-the-air reception of broadcast television and radio stations. Finally, Cunningham observes that the Washington system maintains a local EAS capability which allows local police and public safety officials to transmit emergency messages over the system.

Order”).

⁵ *Id.* at 15512-13.

⁶ *Id.* at 15516-15518.

⁷ *Id.* at 15513.

⁸ *Id.* at 15513, n. 59.

4. Based upon our review of the financial data and other information submitted by Cunningham, we conclude that a temporary, 12-month waiver of Section 11.11(a) for the Washington, Kansas system and a temporary, 24-month waiver for the Hebron, Nebraska system is warranted.⁹ In particular, we find that the estimated \$19,000 cost of EAS equipment for these small cable systems, which are slated for elimination, could impose a financial hardship on Cunningham.

5. We note that the Commission recently amended the EAS rules to permit cable systems serving fewer than 5,000 subscribers to install FCC-certified decoder-only units, rather than both encoders and decoders, if such a device becomes available.¹⁰ Based on comments from equipment manufacturers, we anticipate that such a decoder-only system could result in significant cost savings to small cable systems.¹¹

6. Accordingly, **IT IS ORDERED** that, pursuant to Sections 0.111, 0.204(b) and 0.311 of the Rules,¹² Cunningham Communications, Inc. **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2003 for its Washington, Kansas cable system and **IS GRANTED** a waiver of Section 11.11(a) of the Rules until October 1, 2004 for its Hebron, Nebraska cable system.

7. **IT IS FURTHER ORDERED** that Cunningham Communications, Inc. place a copy of this waiver in its system files.

8. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by Certified Mail Return Receipt Requested to counsel for Cunningham Communications, Inc., Christopher C. Cinnamon, Esq., Cinnamon Mueller, 307 North Michigan Avenue, Suite 1020, Chicago, Illinois 60601.

FEDERAL COMMUNICATIONS COMMISSION

Joseph P. Casey
Chief, Technical and Public Safety Division
Enforcement Bureau

⁹ The waiver for the Washington, Kansas system will extend 12 months from October 1, 2002, until October 1, 2003 and the waiver for the Hebron, Nebraska system will extend 24 months from October 1, 2002, until October 1, 2004. Cunningham also specifically requested waiver of the testing and monitoring requirements of the EAS rules for these two systems. We clarify that the waivers we are granting also encompass the EAS testing and monitoring requirements.

¹⁰ *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System*, EB Docket 01-66, FCC 02-64 at ¶ 71 (released February 26, 2002).

¹¹ One manufacturer estimated that an EAS decoder-only system can reduce the cost by 64% over what a cable operator would spend for an encoder/decoder unit. *Id.* at ¶ 70.

¹² 47 C.F.R. §§ 0.111, 0.204(b) and 0.311.